

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 630

FINAL READING

Introduced by Business and Labor Committee: Lathrop, 12, Chairperson; McGill, 26; Schilz, 47; Wallman, 30; White, 8.

Read first time January 21, 2009

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act;
2 to amend sections 48-138, 48-139, 48-140, and 48-141,
3 Reissue Revised Statutes of Nebraska, and sections
4 48-106, 48-120.04, 48-125, 48-136, 48-144.03, and 48-168,
5 Revised Statutes Cumulative Supplement, 2008; to change
6 provisions relating to an employer exclusion from the
7 act, implementation of a certain medical fee schedule,
8 periodic compensation payments and lump-sum settlements,
9 court procedures, informal dispute resolution approval,
10 and mediators; to harmonize provisions; to repeal the
11 original sections; and to declare an emergency.

12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-106, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 48-106 (1) The Nebraska Workers' Compensation Act shall
4 apply to the State of Nebraska, to every governmental agency
5 created by the state, and, except as provided in this section,
6 to every resident employer in this state and nonresident employer
7 performing work in this state who employs one or more employees
8 in the regular trade, business, profession, or vocation of such
9 employer.

10 (2) The act shall not apply to:

11 (a) A railroad company engaged in interstate or foreign
12 commerce;

13 (b) Service performed by a worker who is a household
14 domestic servant in a private residence;

15 (c) Service performed by a worker when performed for an
16 employer who is engaged in an agricultural operation and employs
17 only related employees;

18 (d) Service performed by a worker when performed for
19 an employer who is engaged in an agricultural operation and
20 employs unrelated employees unless such service is performed for
21 an employer who during any calendar year employs ten or more
22 unrelated, full-time employees, whether in one or more locations,
23 on each working day for thirteen calendar weeks, whether or not
24 such weeks are consecutive. The act shall apply to an employer
25 thirty days after the thirteenth such week; and

1 (e) Service performed by a person who is engaged in
2 an agricultural operation, or performed by his or her related
3 employees, when the service performed is (i) occasional and (ii)
4 for another person who is engaged in an agricultural operation who
5 has provided or will provide reciprocal or similar service.

6 (3) If the employer is the state or any governmental
7 agency created by the state, the exemption from the act under
8 subdivision (2)(d) of this section does not apply.

9 (4) If the act applies to an employer because the
10 employer meets the requirements of subdivision (2)(d) of this
11 section, all unrelated employees shall be covered under the act and
12 such employees' wages shall be considered for premium purposes.

13 (5) If an employer to whom the act applies because the
14 employer meets the requirements of subdivision (2)(d) of this
15 section subsequently does not employ ten or more unrelated,
16 full-time employees, such employer shall continue to provide
17 workers' compensation insurance coverage for the employees for
18 the remainder of the calendar year and for the next full
19 calendar year. When the required coverage period has expired,
20 such employer may elect to return to exempt status by (a) posting,
21 continuously in a conspicuous place at the employment locations
22 of the employees for a period of at least ninety days, a written
23 or printed notice stating that the employer will no longer carry
24 workers' compensation insurance for the employees and the date such
25 insurance will cease and (b) thereafter no longer carrying a policy

1 of workers' compensation insurance. Failure to provide notice in
2 accordance with this subsection voids an employer's attempt to
3 return to exempt status.

4 (6) An employer who is exempt from the act under
5 subsection (2) of this section may elect to bring the employees of
6 such employer under the act. Such election is made by the employer
7 obtaining a policy of workers' compensation insurance covering
8 such employees. Such policy shall be obtained from a corporation,
9 association, or organization authorized and licensed to transact
10 the business of workers' compensation insurance in this state. If
11 such an exempt employer procures a policy of workers' compensation
12 insurance which is in full force and effect at the time of an
13 accident to an employee of such employer, such procurement is
14 conclusive proof of the employer's and employee's election to be
15 bound by the act. Such an exempt employer who has procured a policy
16 of workers' compensation insurance may elect to return to exempt
17 status by (a) posting, continuously in a conspicuous place at the
18 employment locations of the employees for a period of at least
19 ninety days, a written or printed notice stating that the employer
20 will no longer carry workers' compensation insurance for the
21 employees and the date such insurance will cease and (b) thereafter
22 no longer carrying a policy of workers' compensation insurance.
23 Failure to provide notice in accordance with this subsection voids
24 an employer's attempt to return to exempt status.

25 (7) Every employer exempted under subdivision (2)(d) of

1 this section who does not elect to provide workers' compensation
2 insurance under subsection (6) of this section shall give all
3 unrelated employees at the time of hiring or at any time more than
4 thirty calendar days prior to the time of injury the following
5 written notice which shall be signed by the unrelated employee
6 and retained by the employer: "In this employment you will not
7 be covered by the Nebraska Workers' Compensation Act and you will
8 not be compensated under the act if you are injured on the job
9 or suffer an occupational disease. You should plan accordingly."
10 Failure to provide the notice required by this subsection subjects
11 an employer to liability under and inclusion in the act for all
12 unrelated employees on the basis of failure to give such notice.

13 (8) An exclusion from coverage in any health, accident,
14 or other insurance policy covering a person employed by an employer
15 who is exempt from the act under this section which provides that
16 coverage under the health, accident, or other insurance policy
17 does not apply if such person is entitled to workers' compensation
18 coverage is void as to such person if such employer has not elected
19 to bring the employees of such employer within the act as provided
20 in subsection (6) of this section.

21 (9) For purposes of this section:

22 (a) Agricultural operation means (i) the cultivation of
23 land for the production of agricultural crops, fruit, or other
24 horticultural products or (ii) the ownership, keeping, or feeding
25 of animals for the production of livestock or livestock products;

1 (b) Full-time employee means a person who is employed to
2 work one-half or more of the regularly scheduled hours during each
3 pay period; and

4 (c) Related employee means a spouse of an employer and
5 an employee related to the employer within the third degree by
6 blood or marriage. Relationship by blood or marriage within the
7 third degree includes parents, grandparents, great grandparents,
8 children, grandchildren, great grandchildren, brothers, sisters,
9 uncles, aunts, nephews, nieces, and spouses of the same. If
10 the employer is a partnership, limited liability company, or
11 corporation in which all of the partners, members, or shareholders
12 are related within the third degree by blood or marriage, then
13 related employee means any employee related to any such partner,
14 member, or shareholder within the third degree by blood or
15 marriage.

16 Sec. 2. Section 48-120.04, Revised Statutes Cumulative
17 Supplement, 2008, is amended to read:

18 48-120.04 (1) This section applies only to hospitals
19 identified in subdivision (1)(c) of section 48-120.

20 (2) For inpatient discharges on or after January 1, 2008,
21 the Diagnostic Related Group inpatient hospital fee schedule shall
22 be as set forth in this section, except as otherwise provided in
23 subdivision (1)(d) of section 48-120. Adjustments shall be made
24 annually as provided in this section, with such adjustments to
25 become effective each January 1.

1 (3) For purposes of this section:

2 (a) Current Medicare Factor is derived from the
3 Diagnostic Related Group Prospective Payment System as established
4 by the Centers for Medicare and Medicaid Services under the United
5 States Department of Health and Human Services and means the
6 summation of the following components:

7 (i) Hospital-specific Federal Standardized Amount,
8 including all wage index adjustments and reclassifications;

9 (ii) Hospital-specific Capital Standard Federal Rate,
10 including geographic, outlier, and exception adjustment factors;

11 (iii) Hospital-specific Indirect Medical Education Rate,
12 reflecting a percentage add-on for indirect medical education costs
13 and related capital; and

14 (iv) Hospital-specific Disproportionate Share Hospital
15 Rate, reflecting a percentage add-on for disproportionate share of
16 low income patient costs and related capital;

17 (b) Current Medicare Weight means the weight assigned
18 to each Medicare Diagnostic Related Group as established by the
19 Centers for Medicare and Medicaid Services under the United States
20 Department of Health and Human Services;

21 (c) Diagnostic Related Group means the Diagnostic Related
22 Group assigned to inpatient hospital services using the public
23 domain classification and methodology system developed for the
24 Centers for Medicare and Medicaid Services under the United States
25 Department of Health and Human Services; and

1 (d) Workers' Compensation Factor means the Current
2 Medicare Factor for each hospital multiplied by one hundred fifty
3 percent.

4 (4) The Diagnostic Related Group inpatient hospital
5 fee schedule shall include at least thirty-eight of the most
6 frequently utilized Medicare Diagnostic Related Groups for workers'
7 compensation with the goal that the fee schedule covers at least
8 ninety percent of all workers' compensation inpatient hospital
9 claims submitted by hospitals identified in subdivision (1)(c) of
10 section 48-120. Rehabilitation Diagnostic Related Groups shall not
11 be included in the Diagnostic Related Group inpatient hospital
12 fee schedule. Claims for inpatient trauma services shall not be
13 reimbursed under the Diagnostic Related Group inpatient hospital
14 fee schedule established under this section until January 1, ~~2010-~~
15 2011. Claims for inpatient trauma services prior to January 1,
16 ~~2010,~~ 2011, shall be reimbursed under the fees established by
17 the compensation court pursuant to subdivision (1)(b) of section
18 48-120 or as contracted pursuant to subdivision (1)(d) of such
19 section. For purposes of this subsection, trauma means a major
20 single-system or multisystem injury requiring immediate medical or
21 surgical intervention or treatment to prevent death or permanent
22 disability.

23 (5) The Diagnostic Related Group inpatient hospital fee
24 schedule shall be established by the following methodology:

25 (a) The Diagnostic Related Group reimbursement amount

1 required under the Nebraska Workers' Compensation Act shall be
2 equal to the Current Medicare Weight multiplied by the Workers'
3 Compensation Factor for each hospital;

4 (b) The Stop-Loss Threshold amount shall be the
5 Diagnostic Related Group reimbursement amount calculated in
6 subdivision (5)(a) of this section multiplied by two and one-half;

7 (c) For charges over the Stop-Loss Threshold amount of
8 the schedule, the hospital shall be reimbursed the Diagnostic
9 Related Group reimbursement amount calculated in subdivision (5)(a)
10 of this section plus sixty percent of the charges over the
11 Stop-Loss Threshold amount; and

12 (d) For charges less than the Stop-Loss Threshold amount
13 of the schedule, the hospital shall be reimbursed the lower of
14 the hospital's billed charges or the Diagnostic Related Group
15 reimbursement amount calculated in subdivision (5)(a) of this
16 section.

17 (6) For charges for all other stays or services that are
18 not on the Diagnostic Related Group inpatient hospital fee schedule
19 or are not contracted for under subdivision (1)(d) of section
20 48-120, the hospital shall be reimbursed under the schedule of
21 fees established by the compensation court pursuant to subdivision
22 (1)(b) of section 48-120.

23 (7) Each hospital shall assign and include a Diagnostic
24 Related Group on each workers' compensation claim submitted.
25 The workers' compensation insurer, risk management pool, or

1 self-insured employer may audit the Diagnostic Related Group
2 assignment of the hospital.

3 (8) The chief executive officer of each hospital shall
4 sign and file with the administrator of the compensation court by
5 October 15 of each year, in the form and manner prescribed by the
6 administrator, a sworn statement disclosing the Current Medicare
7 Factor of the hospital in effect on October 1 of such year and each
8 item and amount making up such factor.

9 (9) Each hospital, workers' compensation insurer, risk
10 management pool, and self-insured employer shall report to the
11 administrator of the compensation court by October 15 of each year,
12 in the form and manner prescribed by the administrator, the total
13 number of claims submitted for each Diagnostic Related Group and
14 the number of times billed charges exceeded the Stop-Loss Threshold
15 amount for each Diagnostic Related Group.

16 (10) The compensation court may add or subtract
17 Diagnostic Related Groups in striving to achieve the goal of
18 including those Diagnostic Related Groups that encompass at least
19 ninety percent of the inpatient hospital workers' compensation
20 claims submitted by hospitals identified in subdivision (1)(c) of
21 section 48-120. The administrator of the compensation court shall
22 annually make necessary adjustments to comply with the Current
23 Medicare Weights and shall annually adjust the Current Medicare
24 Factor for each hospital based on the annual statement submitted
25 pursuant to subsection (8) of this section.

1 Sec. 3. Section 48-125, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 48-125 ~~(1)~~ (1)(a) Except as hereinafter provided, all
4 amounts of compensation payable under the Nebraska Workers'
5 Compensation Act shall be payable periodically in accordance with
6 the methods of payment of wages of the employee at the time of the
7 injury or death. Such payments shall be sent directly to the person
8 entitled to compensation or his or her designated representative
9 except as otherwise provided in section 48-149.

10 (b) Fifty percent shall be added for waiting time for
11 all delinquent payments after thirty days' notice has been given
12 of disability or after thirty days from the entry of a final
13 order, award, or judgment of the compensation court, except that
14 for any award or judgment against the state in excess of one
15 hundred thousand dollars which must be reviewed by the Legislature
16 as provided in section 48-1,102, fifty percent shall be added
17 for waiting time for delinquent payments thirty days after the
18 effective date of the legislative bill appropriating any funds
19 necessary to pay the portion of the award or judgment in excess of
20 one hundred thousand dollars. ~~Such payments shall be sent directly~~
21 ~~to the person entitled to compensation or his or her designated~~
22 ~~representative except as otherwise provided in section 48-149.~~

23 (2) Whenever the employer refuses payment of compensation
24 or medical payments subject to section 48-120, or when the employer
25 neglects to pay compensation for thirty days after injury or

1 neglects to pay medical payments subject to such section after
2 thirty days' notice has been given of the obligation for medical
3 payments, and proceedings are held before the Nebraska Workers'
4 Compensation Court, a reasonable attorney's fee shall be allowed
5 the employee by the compensation court in all cases when the
6 employee receives an award. Attorney's fees allowed shall not
7 be deducted from the amounts ordered to be paid for medical
8 services nor shall attorney's fees be charged to the medical
9 providers. If the employer files an application for review before
10 the compensation court from an award of a judge of the compensation
11 court and fails to obtain any reduction in the amount of such
12 award, the compensation court shall allow the employee a reasonable
13 attorney's fee to be taxed as costs against the employer for such
14 review, and the Court of Appeals or Supreme Court shall in like
15 manner allow the employee a reasonable sum as attorney's fees for
16 the proceedings in the Court of Appeals or Supreme Court. If the
17 employee files an application for a review before the compensation
18 court from an order of a judge of the compensation court denying an
19 award and obtains an award or if the employee files an application
20 for a review before the compensation court from an award of a judge
21 of the compensation court when the amount of compensation due is
22 disputed and obtains an increase in the amount of such award, the
23 compensation court may allow the employee a reasonable attorney's
24 fee to be taxed as costs against the employer for such review, and
25 the Court of Appeals or Supreme Court may in like manner allow the

1 employee a reasonable sum as attorney's fees for the proceedings in
2 the Court of Appeals or Supreme Court. A reasonable attorney's fee
3 allowed pursuant to this section shall not affect or diminish the
4 amount of the award.

5 (3) When an attorney's fee is allowed pursuant to this
6 section, there shall further be assessed against the employer an
7 amount of interest on the final award obtained, computed from the
8 date compensation was payable, as provided in section 48-119, until
9 the date payment is made by the employer, at a rate equal to the
10 rate of interest allowed per annum under section 45-104.01, as such
11 rate may from time to time be adjusted by the Legislature. Interest
12 shall apply only to those weekly compensation benefits awarded
13 which have accrued as of the date payment is made by the employer.
14 If the employer pays or tenders payment of compensation, the amount
15 of compensation due is disputed, and the award obtained is greater
16 than the amount paid or tendered by the employer, the assessment of
17 interest shall be determined solely upon the difference between the
18 amount awarded and the amount tendered or paid.

19 Sec. 4. Section 48-136, Revised Statutes Cumulative
20 Supplement, 2008, is amended to read:

21 48-136 The interested parties shall have the right to
22 settle all matters of compensation between themselves with the
23 consent of the workers' compensation insurer, if any, and in
24 accordance with the Nebraska Workers' Compensation Act. ~~A copy of~~
25 ~~such settlement, duly verified by all parties, shall be filed with~~

1 ~~the Nebraska Workers' Compensation Court and no~~ No such settlement
2 shall be binding unless the settlement is in accordance with such
3 act.

4 Sec. 5. Section 48-138, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 48-138 The amounts of compensation payable periodically
7 under the law by agreement of the parties with the approval of
8 the Nebraska Workers' Compensation Court may be commuted to one
9 or more lump-sum payments, except compensation due for death,
10 permanent disability, or claimed permanent disability which may be
11 commuted only ~~upon the order or decision of the compensation court~~
12 ~~pursuant to~~ as provided in section 48-139. ~~If~~ ~~PROVIDED,~~ ~~that when~~
13 commutation is agreed upon pursuant to this section or ~~approved by~~
14 ~~order pursuant to~~ section 48-139, the lump sum to be paid shall be
15 fixed at an amount which will equal the total sum of the probable
16 future payments, capitalized at their present value upon the basis
17 of interest calculated at five percent per annum with annual rests.

18 The fee of the clerk of the compensation court for
19 filing, docketing, and indexing an agreement submitted for approval
20 as provided in this section shall be fifteen dollars. The fees
21 shall be remitted by the clerk to the State Treasurer for credit to
22 the Compensation Court Cash Fund.

23 Sec. 6. Section 48-139, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 48-139 (1)(a) Whenever an injured employee or his

1 or her dependents and the employer agree that the amounts
2 of compensation due as periodic payments for death, permanent
3 disability, or claimed permanent disability under the Nebraska
4 Workers' Compensation Act shall be commuted to one or more lump-sum
5 payments, such settlement ~~or agreement therefor~~ shall be submitted
6 to the Nebraska Workers' Compensation Court ~~in the following~~
7 ~~manner:~~ for approval as provided in subsection (2) of this section
8 if:

- 9 (i) The employee is not represented by counsel;
10 (ii) The employee, at the time the settlement is
11 executed, is eligible for medicare, is a medicare beneficiary,
12 or has a reasonable expectation of becoming eligible for medicare
13 within thirty months after the date the settlement is executed;
14 (iii) Medical, surgical, or hospital expenses incurred
15 for treatment of the injury have been paid by medicaid and medicaid
16 will not be reimbursed as part of the settlement;
17 (iv) Medical, surgical, or hospital expenses incurred for
18 treatment of the injury will not be fully paid as part of the
19 settlement; or
20 (v) The settlement seeks to commute amounts of
21 compensation due to dependents of the employee.

22 (b) If such lump-sum settlement is not required to be
23 submitted for approval by the compensation court, a release shall
24 be filed with the compensation court as provided in subsection (3)
25 of this section. Nothing in this section shall be construed to

1 increase the compensation court's duties or authority with respect
2 to the approval of lump-sum settlements under the act.

3 (2)(a) An application for an order approving ~~such a~~
4 lump-sum settlement, ~~or agreement~~ and a duplicate original of such
5 ~~application,~~ both signed and verified by both parties, shall be
6 filed with the clerk of the ~~Nebraska Workers' Compensation Court~~
7 compensation court and shall be entitled the same as an action by
8 such employee or dependents against such employer. The application
9 shall contain a concise statement of the terms of the settlement or
10 agreement sought to be approved with a brief statement of the facts
11 concerning the injury, the nature thereof, the wages received by
12 the injured employee prior thereto, the nature of the employment,
13 and such other matters as may be required by the compensation
14 court. The application may provide for payment of future medical,
15 surgical, or hospital expenses incurred by the employee. The
16 compensation court may hold a hearing on the application at a time
17 and place selected by the compensation court, and proof may be
18 adduced and witnesses subpoenaed and examined the same as in an
19 action in equity.

20 (b) If the compensation court finds such lump-sum
21 ~~settlement or agreement~~ is made in conformity with the compensation
22 schedule and for the best interests of the employee or his or
23 her dependents under all the circumstances, the compensation court
24 shall make an order approving the same. If such ~~agreement or~~
25 ~~settlement~~ is not approved, the compensation court may dismiss the

1 application at the cost of the employer or continue the hearing, in
2 the discretion of the compensation court.

3 (c) Every such lump-sum settlement or agreement approved
4 by order of the compensation court shall be final and conclusive
5 unless procured by fraud. Upon paying the amount approved by the
6 compensation court, the employer ~~(1)~~ (i) shall be discharged from
7 further liability on account of the injury or death, other than
8 liability for the payment of future medical, surgical, or hospital
9 expenses if such liability is approved by the compensation court on
10 the application of the parties, and ~~(2)~~ (ii) shall be entitled to a
11 duly executed release. Upon filing the release, or other proof of
12 payment, the liability of the employer under any agreement, award,
13 finding, or decree shall be discharged of record.

14 (3) If such lump-sum settlement is not required to be
15 submitted for approval by the compensation court, a release shall
16 be filed with the compensation court in accordance with this
17 subsection that is signed and verified by the employee and the
18 employee's attorney. Such release shall be a full and complete
19 discharge from further liability for the employer on account of the
20 injury, including future medical, surgical, or hospital expenses,
21 unless such expenses are specifically excluded from the release.
22 The release shall be made on a form approved by the compensation
23 court and shall contain a statement signed and verified by the
24 employee that:

25 (a) The employee understands and waives all rights under

1 the Nebraska Workers' Compensation Act, including, but not limited
2 to:

3 (i) The right to receive weekly disability benefits, both
4 temporary and permanent;

5 (ii) The right to receive vocational rehabilitation
6 services;

7 (iii) The right to receive future medical, surgical,
8 and hospital services as provided in section 48-120, unless such
9 services are specifically excluded from the release; and

10 (iv) The right to ask a judge of the compensation court
11 to decide the parties' rights and obligations;

12 (b) The employee is not eligible for medicare, is not
13 a current medicare beneficiary, and does not have a reasonable
14 expectation of becoming eligible for medicare within thirty months
15 after the date the settlement is executed;

16 (c) There are no medical, surgical, or hospital expenses
17 incurred for treatment of the injury which have been paid by
18 medicaid and not reimbursed to medicaid by the employer as part of
19 the settlement; and

20 (d) There are no medical, surgical, or hospital expenses
21 incurred for treatment of the injury that will remain unpaid after
22 the settlement.

23 (4) The fees of the clerk of the compensation court
24 for filing, docketing, and indexing an application for an order
25 approving a lump-sum settlement or agreement or filing a release as

1 provided in this section shall be fifteen dollars. The fees shall
 2 be remitted by the clerk to the State Treasurer for credit to the
 3 Compensation Court Cash Fund.

4 Sec. 7. Section 48-140, Reissue Revised Statutes of
 5 Nebraska, is amended to read:

6 48-140 ~~All settlements~~ Any lump-sum settlement by
 7 agreement of the parties with the approval of the Nebraska Workers'
 8 ~~Compensation Court and all~~ pursuant to section 48-139 shall be
 9 final and not subject to readjustment if the settlement is in
 10 conformity with the Nebraska Workers' Compensation Act, unless the
 11 settlement is procured by fraud. All awards of compensation made by
 12 the compensation court, except those amounts payable periodically,
 13 shall be final and not subject to readjustment. ~~PROVIDED, no~~
 14 ~~settlement shall be final unless it is in conformity with the~~
 15 ~~Nebraska Workers' Compensation Act and approved by order of the~~
 16 ~~compensation court pursuant to section 48-139.~~

17 Sec. 8. Section 48-141, Reissue Revised Statutes of
 18 Nebraska, is amended to read:

19 48-141 All amounts paid by an employer or by an insurance
 20 company carrying such risk, as the case may be, and received by the
 21 employee or his or her dependents by lump-sum payments, ~~approved by~~
 22 ~~order~~ pursuant to section 48-139, shall be final and not subject
 23 to readjustment if the lump-sum settlement is in conformity with
 24 the Nebraska Workers' Compensation Act, unless the settlement is
 25 procured by fraud, but the amount of any agreement or award

1 payable periodically may be modified as follows: (1) At any time by
2 agreement of the parties with the approval of the Nebraska Workers'
3 Compensation Court; or (2) if the parties cannot agree, then at any
4 time after six months from the date of the agreement or award, an
5 application may be made by either party on the ground of increase
6 or decrease of incapacity due solely to the injury or that the
7 condition of a dependent has changed as to age or marriage or
8 by reason of the death of the dependent. In such case, the same
9 procedure shall be followed as in sections 48-173 to 48-185 in case
10 of disputed claim for compensation.

11 Sec. 9. Section 48-144.03, Revised Statutes Cumulative
12 Supplement, 2008, is amended to read:

13 48-144.03 (1) Notwithstanding policy provisions that
14 stipulate a workers' compensation insurance policy to be a contract
15 with a fixed term of coverage that expires at the end of the
16 term, coverage under a workers' compensation insurance policy
17 shall continue in full force and effect until notice is given in
18 accordance with this section.

19 (2) No cancellation of a workers' compensation insurance
20 policy within the policy period shall be effective unless notice
21 of the cancellation is given by the workers' compensation insurer
22 to the Nebraska Workers' Compensation Court and to the employer.
23 No such cancellation shall be effective until thirty days after
24 the giving of such notices, except that the cancellation may
25 be effective ten days after the giving of such notices if such

1 cancellation is based on (a) notice from the employer to the
2 insurer to cancel the policy, (b) nonpayment of premium due the
3 insurer under any policy written by the insurer for the employer,
4 (c) failure of the employer to reimburse deductible losses as
5 required under any policy written by the insurer for the employer,
6 or (d) failure of the employer, if covered pursuant to section
7 44-3,158, to comply with sections 48-443 to 48-445.

8 (3) No workers' compensation insurance policy shall
9 expire or lapse at the end of the policy period unless notice
10 of nonrenewal is given by the workers' compensation insurer to the
11 compensation court and to the employer. No workers' compensation
12 insurance policy shall expire or lapse until thirty days after the
13 giving of such notices, except that a policy may expire or lapse
14 ten days after the giving of such notices if the nonrenewal is
15 based on (a) notice from the employer to the insurer to not renew
16 the policy, (b) nonpayment of premium due the insurer under any
17 policy written by the insurer for the employer, (c) failure of
18 the employer to reimburse deductible losses as required under any
19 policy written by the insurer for the employer, or (d) failure of
20 the employer, if covered pursuant to section 44-3,158, to comply
21 with sections 48-443 to 48-445.

22 (4) Notwithstanding other provisions of this section, if
23 the employer has secured workers' compensation insurance coverage
24 with another workers' compensation insurer, then the cancellation
25 or nonrenewal shall be effective as of the effective date of such

1 other insurance coverage.

2 (5) The notices required by this section shall state the
3 reason for the cancellation or nonrenewal of the policy.

4 (6) The notices required by this section shall be
5 provided in writing and shall be deemed given upon the mailing
6 of such notices by certified mail, except that notices from
7 insurers to the compensation court may be provided by electronic
8 means if such electronic means is approved by the administrator of
9 the compensation court. If notice is provided by electronic means
10 pursuant to such an approval, it shall be deemed given upon receipt
11 and acceptance by the compensation court.

12 Sec. 10. Section 48-168, Revised Statutes Cumulative
13 Supplement, 2008, is amended to read:

14 48-168 (1) The Nebraska Workers' Compensation Court shall
15 not be bound by the usual common-law or statutory rules of evidence
16 or by any technical or formal rules of procedure, other than as
17 herein provided, but may make the investigation in such manner as
18 in its judgment is best calculated to ascertain the substantial
19 rights of the parties and to carry out justly the spirit of the
20 Nebraska Workers' Compensation Act.

21 (2) (a) The Nebraska Workers' Compensation Court may
22 establish procedures whereby a dispute may be submitted by
23 the parties, by the provider of medical, surgical, or hospital
24 services pursuant to section 48-120, by a vocational rehabilitation
25 counselor certified pursuant to section 48-162.01, or by the

1 compensation court on its own motion for informal dispute
2 resolution by a staff member of the compensation court or outside
3 mediator. Any party who requests such informal dispute resolution
4 shall not be precluded from filing a petition pursuant to section
5 48-173 if otherwise permitted. If informal dispute resolution
6 is ordered by the compensation court on its own motion, the
7 compensation court may state a date for the case to return to
8 court. Such date shall be no longer than ninety days after the
9 date the order was signed unless the court grants an extension upon
10 request of the parties. No settlement ~~or~~ agreement reached as the
11 result of an informal dispute resolution proceeding shall be final
12 or binding unless such settlement ~~or~~ agreement is in conformity
13 with the Nebraska Workers' Compensation Act. Any such settlement
14 shall be voluntarily entered into by the parties.

15 ~~(b) Until January 1, 2008, the Nebraska Workers'~~
16 ~~Compensation Court shall establish procedures for informal dispute~~
17 ~~resolution and arbitration for a dispute regarding the fees owed~~
18 ~~for medical, surgical, or hospital services provided pursuant~~
19 ~~to section 48-120. If the provider of medical, surgical, or~~
20 ~~hospital services and the workers' compensation insurer, risk~~
21 ~~management pool, or self-insured employer are unable to reach an~~
22 ~~agreement on the fees to be paid for such services: (i) They~~
23 ~~may agree to submit the dispute to an attorney staff member of~~
24 ~~the compensation court for resolution of the dispute through the~~
25 ~~informal dispute resolution process and for arbitration, if the~~

1 ~~dispute is unresolved in the informal dispute resolution process,~~
2 ~~or (ii) the parties may agree to submit the dispute directly to~~
3 ~~arbitration. A decision by the attorney staff member for the court~~
4 ~~as the result of an arbitration proceeding shall be final and~~
5 ~~binding and not subject to appeal.~~

6 (b) (i) Except as permitted in subdivision (b) (ii) of
7 this subsection, a mediator shall not make a report, assessment,
8 evaluation, recommendation, finding, or other communication
9 regarding a mediation to a judge of the compensation court that may
10 make a ruling on the dispute that is the subject of the mediation.

11 (ii) A mediator may disclose:

12 (A) Whether the mediation occurred or has terminated,
13 whether a settlement was reached, and attendance; and

14 (B) A mediation communication evidencing abuse, neglect,
15 abandonment, or exploitation of an individual to a public agency
16 responsible for protecting individuals against such mistreatment.

17 (iii) A communication made in violation of subdivision
18 (b) (i) of this subsection shall not be considered by a judge of the
19 compensation court.

20 (c) Informal dispute resolution and arbitration
21 proceedings shall be regarded as settlement negotiations and no
22 admission, representation, or statement made in informal dispute
23 resolution ~~or arbitration~~ proceedings, not otherwise discoverable
24 or obtainable, shall be admissible as evidence or subject to
25 discovery. A staff member or mediator shall not be subject

1 to process requiring the disclosure of any matter discussed
2 during informal dispute resolution ~~or arbitration~~ proceedings.
3 Any information from the files, reports, notes of the staff
4 member or mediator, or other materials or communications, oral or
5 written, relating to an informal dispute resolution ~~or arbitration~~
6 proceeding obtained by a staff member or mediator is privileged and
7 confidential and may not be disclosed without the written consent
8 of all parties to the proceeding. No staff member or mediator shall
9 be held liable for civil damages for any statement or decision made
10 in the process of dispute resolution ~~or arbitration~~ unless such
11 person acted in a manner exhibiting willful or wanton misconduct.

12 (d) The compensation court may adopt and promulgate
13 rules and regulations regarding informal dispute resolution ~~and~~
14 ~~arbitration~~ proceedings that are considered necessary to effectuate
15 the purposes of this section.

16 Sec. 11. Original sections 48-138, 48-139, 48-140, and
17 48-141, Reissue Revised Statutes of Nebraska, and sections 48-106,
18 48-120.04, 48-125, 48-136, 48-144.03, and 48-168, Revised Statutes
19 Cumulative Supplement, 2008, are repealed.

20 Sec. 12. Since an emergency exists, this act takes effect
21 when passed and approved according to law.